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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 PAUL McGARRY, by LAURA J.
7 McGARRY, As Next Friend of Paul
8 McGarry,

9 Petitioner,

10 v.

11 SHERIFF PAUL A. PASTOR, FRANK
12 KRALL, JOHN W. FELLEISEN, and JUDY
13 SNOW,

14 Respondents.

No. 12-5199 RBL/KLS

ORDER TO AMEND OR SHOW CAUSE

15 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28
16 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Petitioner, Paul McGarry, by Laura McGarry as
17 “Next Friend” has filed a Petition for Writ of Habeas Corpus (ECF No. 1) and Emergency
18 Motion to Expedite Writ of Habeas Corpus (ECF No. 4.). The Court declines to serve the
19 petition because it is deficient and the motion for emergency expedition of the petition shall be
20 denied. Petitioner is advised as follows:

21 **DISCUSSION**

22 Paul McGarry is currently charged with malicious mischief in the second degree in Pierce
23 County Superior Court Case No. 12-1-00366-3. ECF No. 1. On January 31, 2012, the Pierce
24 County Superior Court ordered that Mr. McGarry be examined by staff of Western State
25 Hospital. ECF No. 1-1, pp. 1-3. On March 1, 2012, the Pierce County Superior Court ordered
26 that Mr. McGarry be committed to Western State for a period not to exceed ninety days to

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1 undergo evaluation and treatment to restore his competency to proceed to trial. ECF No. 1-2, pp.
2 1-4. Mr. McGarry is represented by counsel in this on-going state court proceeding. *Id.*

3 On March 6, 2012, Laura McGarry, who is not an attorney, attempted to file a habeas
4 petition on behalf of Mr. McGarry challenging the orders of the Pierce County Superior Court.
5 Mr. McGarry did not sign the petition nor is known whether he is aware that the petition was
6 filed. Non-lawyers may not purport to act on someone else's behalf. Furthermore, a person
7 represented by counsel cannot appear or act in his own behalf. *See* GR 2(g)(1), Local Rules of
8 W.D. Wash.

10 Pursuant to 28 U.S.C. § 2242, an application for a writ of habeas corpus shall be in
11 writing, signed and verified by the person for whose relief it is intended or by someone acting on
12 his behalf. Rule 2(c)(5) of the Rules Governing § 2254 cases in the United States District
13 requires that the petition be signed under penalty of perjury by the petitioner. The clear
14 implication of these rules is that a petitioner, or someone legally acting on petitioner's behalf
15 with knowledge of the contents of the petition, such as an attorney, must sign and verify the
16 petition. The signature requirement of Rule 2(c)(5) of the federal habeas corpus rules serves not
17 only to assure that the contents of the petition are verified under oath, but also to indicate that the
18 filing of the petition itself was authorized by its purported petitioner. *See, e.g., Deutscher v.*
19 *Angelone*, 16 F.3d 981, 982-84 (9th Cir.1984). Here, the petition is signed by Mr. McGarry's
20 mother, but there is no indication that Mr. McGarry has authorized her to act on his behalf and
21 she is not an attorney.

24 In addition, this habeas petition challenges the propriety of ongoing proceedings in Pierce
25 County Superior Court. Generally, federal courts will not intervene in a pending criminal
26 proceeding absent extraordinary circumstances where the danger of irreparable harm is both

1 great and immediate. See *Younger v. Harris*, 401 U.S. 37, 45-46 (1971); see also *Fort Belknap*
2 *Indian Community v. Mazurek*, 43 F.3d 428, 431 (9th Cir.1994), cert. denied, 116 S.Ct. 49
3 (1995) (abstention appropriate if ongoing state judicial proceedings implicate important state
4 interests and offer adequate opportunity to litigate federal constitutional issues); *World Famous*
5 *Drinking Emporium v. City of Tempe*, 820 F.2d 1079, 1082 (9th Cir.1987)(Younger abstention
6 doctrine applies when the following three conditions exist: (1) ongoing state judicial proceeding;
7 (2) implication of an important state interest in the proceeding; and (3) an adequate opportunity
8 to raise federal questions in the proceedings).

10 Only in the most unusual circumstances is a petitioner entitled to have the federal court
11 intervene by way of injunction or habeas corpus before the jury comes in, judgment has been
12 appealed from and the case concluded in the state courts. *Drury v. Cox*, 457 F.2d 764, 764-65
13 (9th Cir.1972). See *Carden v. Montana*, 626 F.2d 82, 83-84 (9th Cir.), cert. denied, 449 U.S.
14 1014 (1980). Extraordinary circumstances exist where irreparable injury is both great and
15 immediate, for example where the state law is flagrantly and patently violative of express
16 constitutional prohibitions or where there is a showing of bad faith, harassment, or other unusual
17 circumstances that would call for equitable relief. *Younger*, 401 U.S. at 46, 53-54. There are no
18 extraordinary circumstances here warranting intervention by this Court in any ongoing state
19 proceeding.

21 Moreover, Mr. McGarry's mother attempts to sue, purportedly on her son's behalf, the
22 prosecuting attorney and her son's assigned counsel. However, neither of these parties are
23 proper respondents to a habeas petition. The proper respondent to a habeas petition is the
24 "person who has custody over [the petitioner]." 28 U.S.C. § 2242; see also § 2243; *Brittingham*
25 *v. United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir.

1 1989). According to the petition, Mr. McGarry is currently confined at the Pierce County Jail (or
2 temporarily at Western State Hospital for his competency evaluation). Therefore, the proper
3 respondent is the individual in charge of the Pierce County Jail.

4 Due to the deficiencies described above, the Court will not serve the petition. Petitioner
5 may file an amended petition curing, if possible, the above noted deficiencies, or show cause
6 explaining why this matter should not be dismissed no later than **April 10, 2012**. If Petitioner
7 fails to do so or if the amended petition fails to cure the above-noted deficiencies, the Court will
8 recommend dismissal of this action.
9

10 Accordingly, it is **ORDERED**:

- 11 (1) Petitioner shall file an amended petition or show cause why this matter
12 should not be dismissed **on or before April 20, 2012**.
- 13 (2) Petitioner's emergency motion to expedite writ of habeas corpus (ECF No.
14 4) is **DENIED**.
- 15 (3) The Court Clerk is directed to send a copy of this Order to Petitioner.

16 **DATED** this 13th day of March, 2012.

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19 Karen L. Strombom
20 United States Magistrate Judge
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